IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2533 of 2002
with
CIVIL APPLICATION No 9126 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GEB

Versus

VASHRAMBHAI BHURABHAI PATEL

Appearance:
1. First Appeal No. 2533 of 2002
MS RV ACHARYA for Appellant No. 1-2
MR NAGIN N GANDHI for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 17/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

#. This appeal is filed by appellant - Gujarat Electricity Board (hereinafer referred as "GEB" in short) challenging the judgement and decree passed by the learned 3rd Joint Civil Judge (SD) Surat dated 29th November, 2001 passed in Special Civil Suit No. 441 of 1996. As found from the judgement under challenge, the respondent plaintiff has filed suit for recovery of compensation for Rs.7 lacs and it was decreed and the trial Court has directed the appellant defendant to pay compensation of Rs. 7 lacs with running interest at the rate of 12% p.a. from the date of filing of the suit till realisation with costs and further ordered that on such deposit is being made, a sum of Rs. 5 lac is to be invested in the name of plaintiff for 5 years in any nationalised bank and the plaintiff was entitled to withdraw interest periodically accrued on such deposit and balance amount is to be paid to the plaintiff in cash.

#. As found from the papers, at the time of admission of appeal, the Division Bench has as per order dated 24th December, 2002, had while admitting the appeal, ordered that the appeal to be heard finally on 24.1.2003 and Mr. Gandhi, learned advocate appeared for the respondent plaintiff waives notice of admission and appellant was directed to supply paper book and the R&P was called for. The application for stay filed by the appellant applicant was also placed before the Court and while admitting the appeal, the Court had issued Rule in the Civil Application, which was made returnable on 24.1.2003 and ad-interim relief in terms of para 4-B was granted on condition that the applicant shall deposit the entire decretal amount together with costs and interest before the Trial Court before returnable date and the Court has further observed that the order regarding disbursement will be passed on the returnable date, if the main appeal is not heard finally and Mr. Gandhi, learned advocate has also waives service of Rule on behalf of the respondent plaintiff. On the returnable date i.e. on 24.1.2003, the matter was placed before us and considering the submissions made before us by Mr. Gandhi by informing us that as per order passed earlier, as per the instructions received by his briefing lawyer, the applicant has not deposited the amount with the Trial Court and as found from the record that the R&P was also not received. Accordingly, we have directed the office

to see that the R&P is to be called for immediately so as to reach this court on or before 10.2.2003 and time to furnish paper book is also granted upto 14.2.2003 and we have kept the appeal along with Civil Application for final hearing on 14.2.2003.

#. When the matter was reached before us today, we have heard Ms. Aacharya, learned advocate for the appellant GE Board and during hearing, she has taken us through the judgement and decree under challenge as well as oral and documentary evidence recorded during the trial. It is her contention that the learned Trial Judge was not right in accepting the case put forwarded by the plaintiff, which resulted into miscarriage of justice as according to her, the plaintiff has failed to prove his case to the effect that the plaintiff met with an accident, in which, he sustained burnt injuries due to negligence of the defendant. According to her, the trial Court has committed an error in accepting the evidence led by the respondent - plaintiff. In short, it is the contention of Ms. Aacharya that findings recorded by the learned Trial Judge on the point of negligence is based on no evidence and further that even inspite of the case put forward by the respondent plaintiff, there is nothing to indicate that the plaintiff was getting Rs.3000=00 p.m. by way of salary and according to Ms. Aacharya, learned Trial Judge has committed error in accepting the evidence of the plaintiff in respect of the income, which he was getting by way of salary. Ms. Aacharya has also vehemently urged that the trial Court has failed to consider the defence put forward by the appellant defendant to the effect that the GEB has taken all care to avoid accident and further that it is not the negligence on the part of the Board in which the applicant plaintiff had sustained burnt injuries and according to her, the injuries sustained by the applicant plaintiff is merely an accident, for which, the Board cannot be held responsible for negligence and accordingly, the appellant Board is not responsible to make payment by way of compensation. It is her submission that the Trial Court was not justified by awarding interest at the rate of 10% p.a. from the date of filing of the suit, as according to her, even the interest awarded by the learned Trial Judge, has on the higher side and prayed for setting aside the judgement and decree under challenge.

#. Mr. Gandhi, learned advocate, who appeared for the respondent - original plaintiff has vehemently urged and submitted that the judgement and decree passed by the learned trial Judge is right and he has supported the

judgement and decree. It is his submission while taking us through the evidence that there is no challenged by the defendant in respect of the evidence led by the plaintiff and looking to the burnt injuries sustained by injured plaintiff, the trial Court has considered such evidence and decreed the suit and further that even the interest awarded at the rate of 10% p.a. deserves to be confirmed and accordingly, he prayed for dismissal of the appeal.

#. In light of the submissions made before us and on going through the record and as found from the evidence, it transpires that the plaintiff had filed the suit for seeking compensation for recovery of Rs. 7 lacs. The plaintiff was working as "Mehtaji" with Morbi Tiles situated near Madhavbaug Complex in Surat and he was getting Rs.3000=00 per month by way of salary. At the time of accident i.e. on 17th June, 1996, he was aged about 40 years. It is the case of the plaintiff that at about 4-00 p.m. on 17th June, 1996, he was going to godown of Morbi Tiles on his bicycle and when he reached near Tulsi Complex on Nava Varacha road, the D.P. / transformer installed by GEB was suddenly broke out with big sound and because of the blast, hot oil was spread on the him and he sustained 60% burnt injuries on the body and because of receiving such burnt injuries, his face was disfigured and he has also sustained injuries on hands, legs and almost all the parts of the body. It is the case of the plaintiff that GEB was to check the transformer and D.P. periodically as well as to check the control load of electric wire and the GEB has failed to perform such duties and because of such failure and inaction on the part of the GEB, the D.P. was blast, and GEB was negligent in keeping such transformer and DP in good condition. It is also the case of the plaintiff that immediately on getting such burnt injuries, his employer Balubhai took him to Ashaktashram Hospital, Surat and he was treated for such injuries. He remained as an indoor patient for 17.6.1996 to 6.8.1996 for 49 days. During treatment, he has undergone 5 to 6 times screen grafting by the doctor and he has spent about Rs.1,30,000=00 for medicine and hospital charges. During treatment, three persons were required to attend him and he has to spend a sum of Rs.700/- per day for such services rendered by the persons. It is also the case of the plaintiff that because of injuries sustained by him, he was hospitalized and he could not attend his normal job for about more than one year and he has no source of income and further that he was dependant on his wife, even in respect of carrying out daily normal activities. Even he was required to take help from his wife to

provide him food as well as to take assistance for her even to go for natural calls. The plaintiff has placed reliance upon various documents namely disability certificate, medical certificate issued by the hospital where, he has admitted and taken treatment, discharge card from the hospital, panchnama of the incident, medical bills, prescriptions issued by the Doctor as well as various photographs and statutory notice, which was issued by the him to the Board.

#. On the summons being served on the defendant, the written statement Ex. 24 was submitted by the defendant GEB, wherein, the defendant has denied the case put forward by the plaintiff by denying that the Board was not negligent as contended by the plaintiff and also denied the case put forward by the plaintiff that he was getting Rs.3000=00 p.m. by way of salary. In short, it is the case of the defendant Board that the Board is not responsible for the burnt injuries sustained by plaintiff and it is merely an accident and accordingly prayed that the claim for compensation made by plaintiff deserves to be dismissed.

#. Before the Trial Court, plaintiff Vasrambhai Bhurabhai Patel, whose evidence is recorded at Ex. 35. In his evidence, he has deposed that at the relevant time when he sustained such burnt injuries, he was working with Morbi Tiles at Surat and said factory was belongs to Balubhai. He was working as "Mehtaji" and he was getting Rs.3000=00 p.m. and his duty hours were from 7-00 a.m. to 8-00 p.m.. He has deposed that on 17th June, 1996, he visited the godown of the factory and when he returned from said go-down towards factory on his bicycle at about 4-00 p.m. he was on the left side of the road and when he reached near Siddhapur Temple on Nana Varachha Road, there was a sudden blast of D.P. / transformer and due to such blast, the hot oil were spread on his body and he sustained 60% burnt injuries. The D.P. was consisting of iron and wires were burnt. He has sustained burnt injuries on various parts of the body including, face, legs, hands, chest as well as hands and his skins were come out. He has deposed that in the said condition, he reached to the office of his employer and his master has taken him to the Aashaktashram hospital. He remained as indoor patient for about 45 days and he was kept in ICU and he was discharged from the hospital because of shortage of accommodation in the hospital and there was heavy rush in the hospital. The plaintiff has deposed that his brother Ambarambhai, his wife and brother in law of his father had to stay with him as his attendance and they have to spend Rs.200/- per day. He has deposed that

he could not take his dinner as well as he could not go for natural calls even without the help of his wife. Due to burnt injuries, his hands, fingers have been badly damaged from the wrist of the hands and he is not in a position to work. He is not in a position to take his food and drink water and he is dependant on his wife. Even for drinking water, he used straw. His entire fingers and other parts of the body are disfigured. He was not in a position to work because of burnt injury and even after he was discharged from the hospital, he has to lay down for about one and half year and he has sustained 75% permanent disability. He has also produced the disability certificate issued by the Medical Officer of Civil Hospital. He has also produced the medical certificate from the doctor of Ashaktashram Hospital. According to him, he has spent Rs.1,40,000/- for treatment including medicine and special diet. After he discharged from the hospital, he has to go for follow up of treatment and he went for follow up treatment for about 10 to 12 times at Ashaktashram Hospital, Surat and every time he has to spend Rs.500 to 700/-. He has also deposed that before joining Morbi Tiles, he was working as "Mehtaji", where, he was getting Rs.2500=00 p.m. and as the Morbi Tiles has offered him salary of Rs.3000=00 p.m. he has joined the services of Morbi Tiles and he was getting salary of Rs.3000=00 per month and at present Mehtaji attached to Morbi Tiles is getting Rs.4000=00 per month. He has deposed that because of the burnt injuries sustained by him, he was not in a position to work and continue with Morbi Tiles. He has deposed that his family is consisting of his wife, two sons and all are dependant on him. He has deposed that in respect of the accident, in which he has sustained burnt injuries, the said incident was recorded at Kapodara Police Station and Kapodara Police authority had also visited the site and recorded panchnama. The panchnama prepared by the police authority Kapodara by the Police Inspector is also produced on the record of the case at Ex. 39. In his deposition, he has also produced the discharge card issued by Ashaktashram Hospital, which is at Ex.40 and he has also produced certain bills and all the bills are found at Ex.41. He has also produced legal notice issued through advocate, which is at Ex.43 and during his deposition, he has also produced several bills including the prescriptions issued by the Doctor, which are are Ex. 43. He has also produced the photographs showing the burnt injuries sustained by him, which are at Ex. 45, which show that he has sustained burnt injuries on various parts of the body. As found from his deposition that the D.P. / transformer was placed by GEB before 12 years and Board has not taken any care to maintain the

said DP and the transformer in proper condition and no Board or sign was kept by the GEB to show that the place is a danger place. He has further deposed that after the accident, he requested the authority to make payment by way of compensation, however, no payment was made and accordingly, it is only because of negligence on the part of the GEB, he has sustained burnt injuries and accordingly, prayed for compensation by way of damages.

#. As found from the cross-examination of the injured, he has admitted that he has no written evidence to show that he was working with Morbi Tiles and he was getting salary without any receipt. He has also denied that as Mehtaji, his work is not restricted to sit in the office. He has also denied that he was not getting Rs.3000=00 p.m. and further admitted that for payment of above Rs.500=00, one has to give receipt. He has denied the suggestion that while working as Mehtaji, he was not suppose to go to visit godown. He has further admitted that when he was passing through that place, he has not presumed that the D.P. was likely to blast. It is further found from the cross examination that after he sustained injuries, he himself went to the office and his owner has taken him to the hospital and at that time he was conscious. It is further admitted that he has not purchased the medicines personally and the disability certificate is obtained by him to get the benefit. He has also denied the suggestion that D.P. is always placed after making full checking and he has also not seen that the Board is not maintaining the said D.P. / transformer.

##. One Shri Durlabhji Mohanlal Gautami has deposed on behalf of the GEB at Ex. 47. He was working as Deputy Engineer with the GEB on 25th May, 1997 in Surat Rural Sub-division. He is serving with GEB since last 1978. He has deposed that after the transformer was placed, considering the capacity of the transformer, 80 to 90% load was provided to that transformer and after the electric connection is granted and after examining the transformer by the Electrical Inspector, the same is to be functioned and the Electrical Inspector inspect the transformer yearly. He has deposed that Electrical Inspector and Maintenance staff periodically checked the transformers and changed the oil, if required. He has deposed that there was no complaint regarding transformer. He has deposed that transformer cannot burst due to change of power. The transformer can also burst because of internal reasons. The transformer is placed on the plinth and the transformer was not burst due to leakage of oil and there was no negligence on the

part of the Board and after the blasting of the transformer, no body has informed the GEB. After the accident, the Electrical Inspector was informed in his division. There are 48 villages and about 350 transformers are there and during his service tenure, this is the first incident, which is occurred.

##. In cross-examination, Mr. Gautam has admitted that he has no document to show that on which date, the transformer was checked by the GEB. He has also admitted that the transformer is kept on a public road. It is further found from the cross examination that the transformer is about 22,000 walts. The transformer contained oil and it become hot. There is also a cooling system in the transformer. He has denied that due to change of power, the transformer cannot sustained damage. It is further found that the reason for burst of the transformer / D.P. is still not known as no report is received. He has further admitted that no steps were taken to restrict the movement of the people and if the transformer is found on the road side, it is dangerous. He has admitted that the police authority has also made panchnama. He has also admitted that as Deputy Engineer, it is his duty to reach at the place of accident. It is also found from his deposition that while giving answers to the question put by the Court that he has not read the panchnama nor he has informed the police and he has also admitted that he met the injured in the hospital and further he has in term admitted that condition of the plaintiff is pitiable.

##. The next witness examined by defendant is Shri Bharatkumar Girdharlal Prajapati, whose evidence is recorded at Ex. 50. He has deposed that he is working as Electrical Inspector and since 8th April, 1999 he is working at Surat. He has deposed that his duty is to check the new line as well as to check the DP and after examining such line and transformer, the electric connection is supplied. The Board pays inspection fees. Old transformer to be examined yearly and such examination report is received in the office. He has deposed that he has no knowledge that on what date the transformer in question was checked. He has also deposed that in normal circumstances the transformer blast because of pressure and he has to inspect after the transformer was blast. He has deposed that the investigation report is not on the record. In cross examination, he has in term admitted that his duty is only in respect of the new transformer and they did not do anything in respect of the old transformer and he has stated that he has no knowledge that whether annual

inspection was done or not.

##. In light of the evidence adduced by the parties, the learned Judge has accepted the case of the plaintiff and held that the plaintiff has proved that he sustained burnt injuries due to negligence of the defendant and further, as found from the evidence, the defendant GEB has failed to prove that the defendant Board has taken proper care to avoid the accident. The learned Judge has also considered the evidence on the point of income and in light of the burnt injuries sustained by the plaintiff and considering the medical certificate as well as bills produced on the record and considering the permanent disability, has accepted the case of the plaintiff that the plaintiff has suffered permanent disability to the extent of 75% body as a whole and further that the earning capacity of the plaintiff is reduced upto 75%. The learned Trial Judge has considered that the loss of income per month of plaintiff is Rs.3375/- and multiplied by 12 months, it comes to Rs.40,500/- per year and has held that loss of income of the plaintiff is Rs.40,500=00 per year and he has applied multiplier of 15 and thus, the Trial Court has fixed the amount of Rs.6,07,500=00 being total loss of income for future due to accident and permanent disability. The learned Judge has also observed that he has occasion to see the plaintiff, who has sustained burnt injuries and photographs regarding injuries sustained by plaintiff, which is also at Ex.45 and he accordingly the learned Judge has granted Rs.50,000=00 under the head of pain, shock and suffering to the plaintiff. Considering the medical bills, which are proved by the plaintiff, the trial Court has granted Rs.25,000=00 under the head of medical expenses. The learned Judge has also considered that two persons were required as attendance with the plaintiff and they could not work for round about two months and therefore, he has awarded Rs.15,000=00 under the head of attendance charges and has also awarded Rs.5000=00 under the head of Special Diet to the plaintiff. Thus, accordingly, the trial Court has awarded a sum of Rs.7,00,000=00 by way of compensation to the plaintiff with running interest at the rate of 10% per annum from the date of filing the suit till realisation.

##. Considering the submissions made before us by Ms. Aacharya and considering the findings recorded by learned Trial Judge, which is based on evidence, it is difficult for us to accept the submissions of Ms. Aacharya that the trial Court has committed any error while recording such finding. In our view, the trial Court has assessed the evidence led before him by the parties on the point

of negligence as well as on the point of income. We have also perused the entire records including photographs of the plaintiff as well as panchnama and the disability certificate of the plaintiff, which are proved by the plaintiff. By way of burnt injuries sustained by the plaintiff, we can say that it is a permanent disability, and looking to such injuries sustained by him, we are of the view that no error is committed by the learned Trial Judge while accepting the case of the plaintiff on all counts namely on the point of negligence as well as on the point of income and in our view, the findings recorded by the learned Trial Judge on the point of negligence and as found from the evidence, the finding is rightly recorded that even as found from the evidence of defendant witness Nos. 1 and 2, wherein, it is found that it is admitted that no proper care has been taken by Board to maintain the D.P./transformer. In our view, the findings recorded by the learned Trial Judge on the point of negligence as well as on the point of income of the plaintiff deserve to be confirmed.

##. The next contention raised by Ms. Aacharya on the point of interest awarded by the learned Trial Judge on the compensation amount, as according to her that the interest awarded by the learned Trial Judge is on the higher side and as observed earlier, the learned Trial Judge has while decreeing the suit of the plaintiff has awarded interest at the rate of 10% p.a. As against this, Mr. Gandhi, learned advocate has vehemently urged that the order of interest does not require any interference as according to him, while filing the suit, the plaintiff had claimed interest at the rate of 18% p.a. and as per the decree passed by the learned Trial Judge, the trial Court has decreed the suit only by awarding interest at the rate of 10% p.a. and accordingly, it is his submission that no modification is required in respect of the decree, when the trial Court has decreed the suit by awarding interest at the rate of 10% p.a.

##. It is also brought to our notice by Ms. Aacharya the decision rendered by Apex Court in the matter of Kaushnuma Begam (Smt.) & others Vs. New India Assurance Co. Ltd. & others, reported in 2001 (2) SCC p.9. In light of the aforesaid decision, we are of the view that there is some substance in the contention raised by Ms. Aacharya and the interest awarded by the learned Trial Judge deserves to be modified. In view of the decision of the Apex Court in case of Kaushnuma Begam (Smt.) & others Vs. New India Assurance Co. Ltd. & others, it will be just and proper that the interest awarded by the

learned Trial Judge deserves to be reduced from 10% p.a. to 9% p.a.. Accordingly, while disposing of this appeal, we confirm the judgement and decree of the Trial Court in respect of findings recorded by learned Trial Judge on the point of negligence as well as on the point of quantum. However, the interest awarded by the learned Trial Judge is modified and it is held that the respondent plaintiff is entitled to compensation of Rs.7 lacs with running interest at the rate of 9% p.a. from the date of filing of the suit till realisation. Accordingly, appeal is partly allowed to the above extent. Rest of the decree passed by the learned Trial Judge is accordingly confirmed. However, there will be no order as to costs.

##. In view of the order passed in main First Appeal No. 2533 of 2002, Civil Application No. 9126 of 2002 is disposed of and the applicant GEB is directed to comply with the order and directed to pay interest at the rate of 9% p.a. instead of 10% p.a. as per the decree passed by the Trial Court. Rule is made absolute with no costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)

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